

CANADA / JUDGMENT

R. v. Walczak

2025 BCSC 1062

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1062 R. v. Walczak

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Walczak,

2025 BCSC 1062

Date: 20250603

Docket: 42813

Registry: Port Alberni

Rex

v.

Joseph Michael Mark Walczak

Corrected Judgment: The text of the judgment was corrected at paragraphs 15 & 23 on February 4, 2026.

Before: The Honourable Mr. Justice Baird

Oral Reasons for Judgment

Re: Voir Dire #1

Counsel for the Crown:

D. Schechter

Counsel for the Accused:

T. Spettigue

Place and Dates of Hearing:

Nanaimo, B.C.

April 22-24, 2025,

May 27, 2025 &

June 3, 2025

Place and Date of Judgment:

Nanaimo, B.C.

June 3, 2025

INTRODUCTION

- [1] This is a voir dire on an application by the accused, Joseph Michael Mark Walczak, for declarations that his rights guaranteed by ss. 8, 9, and 10 of the Charter of Rights and Freedoms were infringed or denied on March 25, 2024. For various reasons that I will summarise in a moment, on the date in question Constable Campos of the RCMP conducted a warrantless search of Mr. Walczak's residence at Unit B-4824 Burde Street in Port Alberni. He claims that he had exigent grounds for doing this related to the safety and security of somebody called Trinity Bonick.
- [2] Cst. Campos did not find Ms. Bonick in the residence, but while he was looking for her, he came across handguns, one of them equipped with a silencer, rifles, ammunition, grenades and other weapons and prohibited devices in plain view in the main room of the apartment. The apartment was secured, an information to obtain a search warrant was sworn, a warrant to search the apartment was issued and executed. As a result of all this, Mr. Walczak has been charged with the 14 counts of alleged criminal wrongdoing in the indictment before the court.

BACKGROUND

- [3] On March 25, 2024, at 2153 hours, Cst. Campos was dispatched to Unit B-4824 Burde Street, Port Alberni, in response to a 911 call for emergency assistance. Constable Randall also responded in a second police unit. Cst. Campos told me that it was an "open 911 call" meaning, he said, that the call taker could hear what was happening at the caller's end of the line but the caller was not saying anything. The information that Cst. Campos received was that a woman could be heard screaming, a man was heard yelling "get the cops in here", and "we know she's in there", and the police dispatcher advised that a domestic assault upon a female might be ongoing.
- [4] Cst. Campos explained that these matters are taken very seriously by the police and are viewed as "high risk" calls. When he arrived at the address in question he saw Mr. Walczak standing near the front door of his apartment, which opens directly onto the Burde Street sidewalk. There were two other people present whom he later identified as Trevor Bertrand

and Randi Simms. According to Cst. Campos, Trevor Bertrand was angry and yelling. Ms. Simms and Mr. Walczak appeared to be calm and undemonstrative. The first thing Cst. Campos did was tell Mr. Bertrand to pipe down or he would be arrested. He separated the parties and told Mr. Walczak to stand-by while he made some inquiries.

- [5] Speaking with Mr. Bertrand and Ms. Simms, Cst. Campos learned that they were Trinity Bonicks' parents. They had invited Trinity to their house for dinner that night but Trinity had declined, saying, if I remember correctly, that she would rather stay home and eat pizza pops. They explained that Trinity is a drug addict, and this response led them to think, for some reason, that something was wrong with her. They went to her apartment but no one answered her door. They were concerned enough that they had Ms. Bonick's landlord let them in. When they discovered that she was not home, they suspected that she may have gone to Mr. Walczak's place. The evidence suggests that Ms. Bonick and Mr. Walczak are or were in some kind of a domestic relationship.
- [6] Ms. Simms told Cst. Campos that when she and Mr. Bertrand arrived at Mr. Walczak's front door, Trinity Bonick sent her an Instagram message saying "Why don't you leave me alone?" or "stop following me." Mr. Bertrand told Cst. Campos that Mr. Walczak was on a bail order forbidding him from contacting Ms. Bonick, a fact that Cst. Campos confirmed by speaking with Mr. Walczak, and by having Cst. Randall perform a CPIC inquiry on her laptop. The CPIC inquiry revealed that Mr. Walczak was the subject of outstanding charges of assault and assault by choking dating back to July 2023, and that as a result he was bound by a bail order forbidding him from contacting Ms. Bonick or being within 100 yards of her.
- [7] Cst. Campos inferred, and I cannot fault him for it, that there had been a recent incident of significant violence inflicted by Mr. Walczak upon Ms. Bonick. Taking things one step at a time, Cst. Campos first asked Mr. Walczak if he could enter the residence to look for Ms. Bonick and satisfy himself that she was safe. Mr. Walczak refused. He then attempted to call Trinity Bonick's cell phone using the number that Randi Simms gave to him. There was no answer. Then Mr. Bertrand told him that he was "100 percent sure" that Trinity was inside because he had heard her voice when he and Ms. Simms first arrived. Both Mr. Bertrand and Ms. Simms expressed themselves to be concerned for Ms. Bonick's safety and well-being.
- [8] On the basis of the information received, Cst. Campos felt that he had reasonable grounds to believe that Ms. Bonick was inside the residence, and also that she might be in danger. It was a fluid situation and Cst. Campos had to make rapid decisions. He detained Mr. Walczak for breach of his bail and handcuffed him. He asked Cst. Randall to read Mr. Walczak his s. 10(b) Charter right to retain and instruct counsel without delay. When her turn came to testify, Cst. Randall was unable to say with any certainty what she said to Mr. Walczak, other than that he had the right to speak to a lawyer and was not obliged to say anything. She could not remember if she asked him if he wished to speak with counsel, or how Mr. Walczak responded if she did, or if any efforts were made to facilitate access immediately, or if she even thought about such a thing.

- [9] Back to Cst. Campos. When asked to summarise his grounds for entering the residence without a warrant, he testified as follows:

It was not just one thing. It was a conjunction of the whole file. It began with Simms and Bertrand forcing themselves into [Ms. Bonick's] house because they were concerned that she is a drug addict. It was the fact that Randy Simms began to receive messages [from Ms. Bonick] saying "why don't you leave me alone" as soon as she arrived to Walczak's residence. It was me speaking to Mr. Walczak and him not allowing me to go inside of his residence to confirm her well-being. In my mind I'm thinking "what is he hiding?" Why doesn't he want me to go inside just to ensure that she is ok. I believe I explained to him that I just need to confirm that she is not there. If I confirm that she is not there, then we're out of here, but I have to investigate in case she was hurt inside. And so that was a large part - that he did not want me to go inside of his residence. There is the fact that Mr. Bertrand heard Ms. Bonick inside. There is the fact that there is a release order for assault and assault by choking which, like I said, in my mind if you choke someone, you could potentially kill them and that is what I was fearful of. I was fearful that if she was inside if she is not responding to her cellphone and she is not responding to my calls and Mr. Walczak doesn't want me inside, well, is there something wrong with her? Has something happened to her? And as a police officer it is my duty just to confirm her well-being and that's how I conclude that I had exigent circumstances to go inside the home.

- [10] Cst. Campos discovered that the front door was locked, and he ordered Mr. Walczak to give him the keys or he would break it down. Mr. Walczak handed over the keys. Cst. Campos went inside and looked around. He did not find Ms. Bonick, but to his surprise he did see rather a large stockpile of firearms, ammunition and other things in plain view. These are the items referred to in the indictment. He radioed his supervisor, Corporal Bergmann, to come to the scene, then he went back outside and asked Mr. Walczak if he had permits for the guns inside. Mr. Walczak said "No". Cst. Campos arrested him for unlawful possession and unsafe storage of firearms, and he directed Cst. Randall to transport him to the local detachment to be lodged in cells.

- [11] In short order Cpl. Bergmann arrived on scene and joined Cst. Campos in a brief search inside the residence to be absolutely certain that Trinity Bonick was not somewhere inside - they looked anywhere they thought a person might be concealed - then they secured the residence and called in backup to maintain scene security and continuity until Cst. Campos finished up an ITO and a warrant was issued. Before he went back to the detachment to do up the paperwork, perhaps around 11:00 p.m., Trinity Bonick showed up in the area and spoke to Cst. Campos. Cpl. Bergmann confirmed this. He knew Ms. Bonick from previous dealings and confirmed her identity. Cpl. Bergmann said that she was "in good spirits" and appeared unharmed. She seemed confused why the police were on scene, and she asked if she could enter Mr. Walczak's apartment. The security officers told her that she could not, and she left without incident.

- [12] The main issue on this voir dire is Cst. Campos's warrantless search of the residence, which is presumptively unreasonable unless the Crown successfully rebuts the presumption, a burden that may be discharged by establishing that there were exigent circumstances necessitating warrantless entry and search to protect life or prevent injury or death. I have read the various authorities referred to by each side, but I am not going to embark on a survey of them. Every case on this topic is different and must be treated individually. No two cases are identical. I will simply say that I have reviewed all of these authorities and I have noted the similarities as well as the differences between them and the matter before me now, and in any event the law is clear by now: in order to justify a warrantless search in response to a 911 call, the police must reasonably believe that the life or safety of a person inside the home is in danger: *R. v. Davidson*, 2017 ONCA 257 at para. 26
- [13] The leading case is *R. v. Godoy*, [1999] 1 S.C.R. 311, in which the court considered safety or protective searches, particularly in response to 911 calls. The decision recognised, at paras. 15 and 16, that the police are bound by a common law duty to protect life and public safety. This is a general duty not limited to protecting the lives of victims of crime, and criminal activity is not a pre-requisite for police assistance. The duty to protect life is engaged whenever it can be reasonably inferred, in response to a 911 call, that someone is or may be in distress. In such circumstances the police are required to investigate. The courts of this country have ruled repeatedly that in response to 911 calls, the police have the power to enter a dwelling house without a warrant to confirm whether there is an emergency. They are not obliged to take the word of the person answering the door that there is nothing wrong, and doubtless there will many cases where to do so could be disastrous.
- [14] In my view, Cst. Campos's warrantless search in the present case was reasonable and justifiable based on his subjective belief, which I find to be sustainable on an objective evaluation, that Ms. Bonick was inside Mr. Walczak's house and was possibly in danger of harm. I would go further and say that Cst. Campos would have been negligent had he not entered the place immediately to check on Ms. Bonick. In other words, not to perform the duty imposed on him by common law. He had solid grounds for believing, based on the statements taken from people identifying themselves as her parents, that Ms. Bonick was a vulnerable drug addict, and that she was inside Mr. Walczak's apartment. He had reasonable grounds to believe that she was probably the complainant on a serious charge of intimate partner violence at Mr. Walczak's hands, and that he was victimising her anew by violating a bail order meant to protect her by forbidding Mr. Walczak to contact her or to be anywhere near her.
- [15] I do not doubt that this newly commissioned police officer - he was in his first year on the job, if I remember correctly - subjectively and sincerely believed that he had an urgent duty to check on Ms. Bonick's safety, and that he should take all reasonable steps to do so despite Mr. Walczak's refusal to let him in. In fact, in my view it was perfectly natural for his concerns to be heightened by this refusal. Viewed objectively, I find that the Crown has established on a balance of probabilities that Cst. Campos's warrantless search of the

apartment was reasonable in the circumstances. I say this even though, as it turned out, Ms. Bonick was not in the apartment, and the evidence, viewed retrospectively and unhurriedly, tends to suggest that it was Mr. Walczak who called 911, probably because Trevor Bertrand was yelling and thumping on his door.

- [16] Mr. Walczak did not testify on this *voir dire*, but his lawyer asked me to question, on the evidence as it may now be appreciated, why Mr. Walczak would summon the police to his place if he were in breach of his bail order by having Ms. Bonick on site. Respectfully, this misses the point. What matters in cases like this is not what a calm and measured retrospective inquiry might reveal, but what was reasonably apparent to Cst. Campos when he decided to go inside, bearing in mind that he had to make quick decisions in the midst of a dynamic and somewhat confusing situation. His testimony excerpted in this ruling sets out precisely what he was thinking, and in my view, it amounts to objectively reasonable grounds for considering, at the time, and in the moment, that exigent circumstances existed, and that immediate and urgent action was required to assure that Ms. Bonick, if she was in the residence, was safe and well.
- [17] I think most reasonable people would agree that Cst. Campos did the right thing here, and it is easy to imagine the furore that would have followed if he had left without checking and Ms. Bonick had come to harm. Defence counsel argued that there were a number of other investigative steps that Cst. Campos should have taken before entering the apartment, but the thing about cases where there is a reasonable perception of urgency concerning life or safety is that immediate and assertive action is required. The failure of police to act rapidly can be dire. As the Court of Appeal observed in *R. v. Larson*, 2011 BCCA 454 at para. 26, "in matters involving the protection of life and physical safety, the police have no realistic choice but to err on the side of caution". I would add to this that a speedy response is usually mandated.
- [18] In this latter connection, I would emphasise the words of Mr. Justice Doherty, of the Ontario Court of Appeal in *R. v. Golub* (1997), 117 C.C.C. (3d) 193 at paras. 18 and 44. He was talking about reasons for making an arrest, but in my view his comments are equally applicable to an urgent decision to perform a safety search of someone's home. Justice Doherty wrote:
18. Often, the officer's decision to arrest must be made quickly in volatile and rapidly changing situations. Judicial reflection is not a luxury the officer can afford. The officer must make his or her decision based on available information which is often less than exact or complete. The law does not expect the same kind of inquiry of a police officer deciding whether to make an arrest that it demands of a justice faced with an application for a search warrant." (para 18)
44. In deciding whether the police were justified in taking steps to ensure their safety, the realities of the arrest situation must be acknowledged. Often the atmosphere at the scene of an arrest is a volatile one and the police must expect the unexpected. The price paid if inadequate measures are taken to secure the scene of an arrest can be very high indeed. Just

as it is wrong to engage in ex-post facto justifications of police conduct, it is equally wrong to ignore the realities of the situations in which police officers must make these decisions.
(para 44)

- [19] For reasons similar to this, I have concluded that Cst. Campos had a duty based on the information that he received to act promptly and assertively by entering Mr. Walczak's apartment to see if Ms. Bonick was there. He did not have to exhaust every conceivable alternative avenue of inquiry before he made his decision to do so. In my view, he took such investigative steps prior to entering as were reasonable and practicable in the circumstances, and he cannot be faulted for acting swiftly rather than considering all of the various possibilities that defence counsel has suggested were necessary.
- [20] Finally, there were questions put to Cst. Campos in cross-examination suggesting that he used Ms. Bonick's possible presence in the apartment as a pretext for searching it for other reasons, but there is no evidence to support such an imputation. I accept Cst. Campos's evidence about his motivations, and I believe him when he says that he had no reason whatsoever to suppose that Mr. Walczak's apartment would contain firearms, ammunition and explosive substances, or evidence of any other sort of criminal activity. I accept, instead, that he was startled and alarmed by what he found, and I would note that, once again, he showed good judgment by getting on the radio and asking his watch commander, Cpl. Bergmann, to attend the scene immediately to give him advice about what he should do next.
- [21] It follows from all of this that Mr. Walczak's s. 8 Charter rights were not infringed or denied. I also dismiss his complaint that he was arbitrarily detained before Cst. Campos undertook his warrantless search. The argument is that Cst. Campos had grounds for an investigative detention, but not for an arrest. I disagree. I find, in all of the circumstances as Cst. Campos subjectively and sincerely understood them, and as I have objectively evaluated them, that as a matter of law he was justified in arresting Mr. Walczak without a warrant under s. 495 of the Criminal Code. I find that he had reasonable grounds to believe that Mr. Walczak was, there and then, committing the very serious criminal offence of breaching his bail by consorting with a vulnerable female person against whom he had been charged with committing violent offences, and with whom he was ordered by a court of law to have no contact. Mr. Walczak was not arbitrarily detained and his s. 9 rights were not violated.
- [22] I am, however, prepared to conclude on all of the evidence that there probably was a breach of Mr. Walczak's s. 10(b) rights. I am aware that the onus is on him to prove it and he has provided me with no evidence. But on questions such as this there are no presumptions at work, and it is a matter of weighing all the evidence in the usual way, including absences of evidence. Here, I strongly doubt - based on her own evidence - that Cst. Randall adequately provided Mr. Walczak with either the informational or implementational component of his right to counsel at the scene when she detained him. I therefore grant his application for a declaration that his s. 10(b) Charter right to retain and instruct counsel without delay was infringed or denied, recognising all the while that he was properly read his rights from

police-issue card only a number of minutes later, and before he was transported from the scene.

[23] The Crown is not adducing in evidence the answer to the only question Cst. Campos asked Mr. Walczak during this interval - once again, that he said "No" when asked if he had a permit for all the firearms that were seen inside the apartment - but the point was made that in accordance with s. 7 of the Firearms Act, S.C. 1995, c. 39, Cst. Campos was lawfully entitled to ask this question in any event and Mr. Walczak was statutorily obligated to answer it. I would characterise this as a neutral factor in the analysis of the case, but nevertheless I find that Mr. Walczak's s. 10 Charter rights were infringed or denied to the limited extent to which I have referred.

"Baird J."

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